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OFFICE OF PETITIONS

In re Application	:
Huber et al.	:
Application No. 10/007,871	: DECISION ON APPLICATION
Filed: November 13, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 500125.02	:

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(b)," filed February 10, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred seventy-seven (277) days to two hundred eighty-one (281) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **two hundred eighty-one (281) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 5, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred seventy-seven (277) days. On February 10, 2004, Applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred eighty-one (281) days.

Applicants assert entitlement to a patent term adjustment of two hundred eighty-one (281) days on the basis that the PTO improperly assessed applicants a delay of four (4) days for responding to a Notice of Omitted Items mailed on December 31, 2001. Applicants assert that they timely filed a response within the three month period pursuant to 37 C.F.R. 1.704(b) on February 27, 2002, not April 4, 2002.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred seventy-seven (277) days based on an adjustment for PTO delay of two hundred eighty-one (281) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delay of four (4) days pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The PTO delay of 281 days has been reviewed and found to be correct. The adjustment of 4 days is at issue.

The adjustment of 4 days has been found to be incorrect. The application file reveals that applicants timely responded to the Notice of Omitted Items on February 27, 2002. Furthermore, the response was a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as April 4, 2002, or assessed applicants a delay of four (4) days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicants' delay with respect to the Notice of Omitted Items should have been assessed as zero (0) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **two hundred eighty-one (281) days** (281 days of PTO delay and 0 days of applicant delay).

¹ Applicants filed the application for patent term adjustment prior to the filing of the issue fee.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to Group Art Unit 2818 for the examiner to consider applicants' request for a supplemental Notice of Allowance.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen